

Message Text

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FROM STOWE FOR STEPHEN SCHWEBEL, DEPUTY LEGAL ADVISER

EO 11652 NA

TAGS TSPA

SUBJ SUGGESTED TEXT FOR SECRETARY'S AUGUST SPEECH IN MONTREAL

1. IN ADDITION TO REFLECTING PAST BEHAVIOR OF STATES, INTERNATIONAL LAW CAN ALSO SERVE AS A VALUABLE AND DYNAMIC GUIDE TO FUTURE ACTIONS. ONE NOTABLE AND CONTEMPORARY EXAMPLE OF SUCH A FUNCTION IS THE DEVELOPMENT OF INTERNATIONAL LAW CONCERNING MAN'S ACTIVITIES IN OUTER SPACE.

2. THE FIRST LAUNCHING OF AN EARTH SATELLITE TOOK PLACE IN 1957 DURING AN INTENSIFIED PROGRAM OF INTERNATIONAL COOPERATION THAT MARKED THE INTERNATIONAL GEOPHYSICAL YEAR. AS EARLY AS 1969, AFTER OTHER SUCCESSFUL LAUNCHES BY THE UNITED STATES AND THE SOVIET UNION, A UNITED NATIONS COMMITTEE OBSERVED THAT THERE MIGHT HAVE ALREADY DEVELOPED A CUSTOMARY PRINCIPLE OF INTERNATIONAL LAW TO THE EFFECT THAT OUTER SPACE, UNLIKE AIR SPACE, IS OPEN TO EXPLOARATION AND USE BY ALL STATES; CONSEQUENTLY CONSENT FOR TRANSIT THROUGH OUTER SPACE OVER THE TERRIROTY OF ANOTHER STATE IS NOT REQUIRED. THAT PRINCIPLE HAS BEEN REINFORCED BY NEARLY TWENTY YEARS OF SPACE ACTIVITIES IN WHICH IT HAS BEEN EXPLICITLY OR IMPLICITLY ACCEPTED BY VIRTUALLY ALL STATES.

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3. A COMPLEX AND VIABLE INTERNATIONAL LEGAL STRUCTURE FOR SPACE

ACTIVITIES HAS BEEN DEVELOPING ON THE FOUNDATION OF THIS PRINCIPLE OF FREEDOM TO EXPLORE AND USE OUTER SPACE. THE UNITED STATES AND THE SOVIET UNION, AS THE EARLIEST SPACE POWERS, AND OTHER CONCERNED COUNTRIES, PRIMARILY THE UNITED KINGDOM, FRANCE AND CANADA, VERY SOON BEGAN TO REALIZE THAT FOR THE COMMON GOOD AS WELL AS THEIR SEPARATE NATIONAL INTERESTS, CERTAIN RESTRAINTS ON THAT FREEDOM SHOULD BE IMPOSED, PREFERABLY IN ADVANCE OF RELEVANT TECHNOLOGICAL DEVELOPMENTS.

4. FOR EXAMPLE, EARLY IN THE 1960'S THE UNITED STATES AND THE USSR CONCLUDED THAT EXTENSION OF MILITARY AND ARMAMENTS COMPETITION TO THE NEWLY ACCESSIBLE AREA OF OUTER SPACE WOULD NOT BE ADVANTAGEOUS TO EITHER. FOLLOWING EXTENSIVE BILATERAL AND MULTILATERAL NEGOTIATIONS, THE UNITED NATIONS IN 1966 APPROVED A TREATY WHICH, AMONG OTHER THINGS, EXPRESSLY PROHIBITS THE ORBITING OR OTHERWISE STATIONING IN OUTER SPACE OF NUCLEAR WEAPONS OR ANY OTHER KINDS OF WEAPONS OF MASS DESTRUCTION. SINCE THAT TIME TO THE BEST OF OUR KNOWLEDGE NATIONS HAVE RESPECTED THAT PROHIBITION; THE WORLD HAS BEEN SPARED AT LEAST THAT PARTICULAR ADDED DANGER, AND NATIONS HAVE AVOIDED THE TREMENDOUS EXPENDITURES OF MONEY AND RESOURCES WHICH COULD OTHERWISE HAVE BEEN DEVOTED TO DEVELOP SUCH TECHNICAL CAPABILITIES.

5. I MIGHT NOTE ALSO THAT THE ESTABLISHMENT OF MILITARY BASES, THE TESTING OF ANY TYPE OF WEAPONS, AND THE CONDUCT OF MILITARY MANEUVERS ON CELESTIAL BODIES WAS FORBIDDEN. BY THESE AGREEMENTS WE HAVE HOPEFULLY SHOWN THAT ENLIGHTENED EFFORTS TO DECREASE COMPETITION AMONG NATIONS MAY BE TAKEN IN ADVANCE OF THE DEVELOPMENT OF NEW WEAPONRY. WE HAVE, AT THE VERY LEAST, TAKEN MEANINGFUL STEPS TO PREVENT THE ARMING OF AN ENVIRONMENT WHICH HAS BEEN LARGELY OR ENTIRELY ARMS FREE.

6. IN ADDITION, THE OUTER SPACE TREATY, WHICH CAME INTO FORCE IN 1967, ESTABLISHES A LEGAL FRAMEWORK WHICH STRONGLY ENCOURAGES INTERNATIONAL COOPERATION IN SPACE ACTIVITIES, WHICH PROVIDES FOR THE WIDEST PRACTICABLE DISSEMINATION OF INFORMATION ABOUT AND FROM SPACE ACTIVITIES, AND WHICH ESTABLISHES LIABILITY FOR DAMAGE CAUSED BY SUCH ACTIVITIES, AND WHICH CALLS ON STATES TO AVOID ADVERSE EFFECTS ON THE ENVIRONMENT OF THE EARTH AND IN OUTER SPACE RESULTING FROM THE ACTIONS. A DISTINCTIVE DEPARTURE FROM LIMITED OFFICIAL USE

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EARLIER INTERNATIONAL LAW IN COMPARABLE SITUATIONS IS AN OBLIGATION THAT ASTRONAUTS ARE TO BE REGARDED AS ENVOYS OF ALL MANKIND, ASSISTED WHERE POSSIBLE, AND RETURNED IF THEY SHOULD LAND IN ANOTHER COUNTRY'S TERRITORY; SINGULARLY DIFFERENT FROM LEGAL OBLIGATIONS REGARDING PILOTS WHO OTHERWISE ENTER THE AIR SPACE OR LAND ON THE SOIL OF OTHER NATIONS. A RELATED OBLIGATION REQUIRES THE RETURN OF SPACE VEHICLES OR COMPONENT PARTS THAT HAVE COME DOWN ON THE TERRITORY OF A SIGNATORY STATE. THESE PROVISIONS

TOO HAVE BEEN RESPECTED IN PRACTICE, AND HAVE BEEN ELABORATED IN DETAIL IN A SEPARATE TREATY, THE ASSISTANCE AND RETURN CONVENTION COMPLETED IN 1967.

7. ANOTHER RARE BUT COMMENDABLE EXAMPLE OF INTERNATIONAL LAW WHICH PRECEDES THE OCCURENCE OF SITUATIONS IN WHICH IT IS NEEDED AND DESIGNED TO APPLY IS EVINced BY THE 1971 OUTER SPACE LIABILITY CONVENTION. ITS PRINCIPAL PURPOSE IS TO PROVIDE FINANCIAL COMPENSATION IF FRAGMENTS OF A SPACE OBJECT RETURN TO EARTH AND CAUSE DAMAGE TO A FOREIGN COUNTRY OR ITS CITIZENS. ALTHOUGH THEY HAVE NOT YET BEEN INVOKED, THE LIABILITY CONVENTION CONTAINS THE MOST ADVANCED SETTLEMENT OF DISPUTES PROVISIONS YET AGREED IN ANY GENERAL MULTI-LATERAL TREATY HAVING POTENTIAL FOR WORLD-WIDE ACCEPTANCE. ALTHOUGH IT IS TOO EARLY TO JUDGE WHETHER THESE PROVISIONS WILL SET A PATTERN FOR THE FUTURE, WE, FOR OUR PART, HOPE TO BUILD ON THIS IMPORTANT AND FARSIGHTED PRECEDENT IN OTHER FIELDS WHEREEVER IT MAY BE PRACTICABLE AND DESIRABLE TO DO SO.

8. WORK IN THIS AREA OF INTERNATIONAL LAW HAS CONTINUED AT A CONSTANT AND CONSTRUCTIVE PACE, AND THE UNITED STATES HAS RECENTLY SIGNED A FOURTH SPACE TREATY, THE CONVENTION ON INTERNATIONAL REGISTRATION OF SPACE OBJECTS. THIS CONVENTION SEEKS TO PROVIDE THE INTERNATIONAL COMMUNITY, THROUGH THE UNITED NATIONS, WITH AN ORDERLY CENSUS OF MAN-MADE OBJECTS LAUNCHED INTO OUTER SPACE, AND WITH A MEANS TO HELP ASCRIBE NATIONALITY TO SPACE VEHICLES.

9. THE UNITED NATIONS' OUTERSPACE COMMITTEE IS NOW ACTIVELY ENGAGED IN NEGOTIATING A DRAFT TREATY RELATING TO MAN'S FUTURE ACTIVITIES ON THE MOON AND OTHER CELESTIAL BODIES, AND FOR SEVERAL YEARS HAS BEEN ATTEMPTING TO DEVELOP PRINCIPLES TO GUIDE POSSIBLE FUTURE INTERNATIONAL BROADCASTING OF TELEVISION SIGNALS DIRECTLY FROM SATELLITES INTO HOME RECEIVERS, THE PRINCIPAL CONCERN ON SOME LIMITED OFFICIAL USE

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COUNTRY'S PARTS BEING THAT SUCH SIGNALS WOULD NOT NECESSARILY PASS THROUGH GOVERNMENT CONTROLLED GROUND STATES AS PRESENT TECHNOLOGY ALLOWS.

10. FINALLY, I WOULD NOTE ALSO THAT EFFORTS ARE CURRENTLY BEING MADE IN THE OUTER SPACE COMMITTEE AND ITS SUBDIVISIONS TO ELABORATE ON, AND IN SOME CASES MODIFY, CURRENT INTERNATIONAL LAW RELATING TO REMOTE SENSING OF THE NATURAL ENVIRONMENT OF THE EARTH, INCLUDING ITS NATURAL RESOURCES. EXTENSIVE EXPERIMENTS ARE ALREADY UNDERWAY IN THIS AREA, EXPERIMENTS PROMISING POTENTIALLY VAST BENEFITS FOR OUR DAILY LIVES. THOSE CONDUCTED BY THE UNITED STATES HAVE BEEN BASED ON THE PRINCIPLE OF MAXIMUM OPEN DISSEMINATION OF THE DATA WE DERIVE. WE BELIEVE THAT, CONSISTENT WITH THE 1967 OUTER SPACE TREATY, THE INTERESTS OF THE INTERNATIONAL COMMUNITY IN GENERAL AND OF THE GREATEST NUMBER OF STATES INDIVIDUALLY

ARE BEST SERVED BY UNIVERSAL ACCESS TO THE GREATEST FEASIBLE
AND PRACTICABLE AMOUNT OF INFORMATION ABOUT THIS EARTH.

11. EFFORTS TO IMPAIR UNIVERSAL DISSEMINATION OF SUCH DATA THAT
WE AND EVENTUALLY OTHERS MAY MAKE AVAILABLE SEEM CONTRARY TO
THE OUTER SPACE TREATY'S PROVISION THAT THE EXPLORATION AND USE
OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE
INTERESTS OF ALL COUNTRIES. INDEED, THEY WOULD SEEM POTENTIALLY
COUNTERPRODUCTIVE TO THE INTERESTS OF MANY STATES BECAUSE THE
PRACTICAL RESULT, WHETHER INTENDED OR NOT, WOULD BE THE CONCEN-
TRATION OF ALL THESE DATA ONLY IN THE HANDS OF A FEW SPACE POWERS,
TO THE EXCLUSION OF MANY OTHER COUNTRIES.

12. ALTHOUGH SUCH A CHANGE IN INTERNATIONAL PRACTICE WOULD
NOT HARM THE PARTICULAR INTERESTS OF THE UNITED STATES, IT
WOULD CERTAINLY EVINCE A STEP BACKWARD FROM THE OPEN,
CONSTRUCTIVE, AND WIDELY BENEFICIAL SYSTEM OF INTERNATIONAL
COOPERATION WHICH PAST DEVELOPMENT OF INTERNATIONAL LAW
HAS SO PROGRESSIVELY ENCOURAGED.

13. THE EXPLORATION AND USE OF OUTER SPACE CONTINUE TO
PROVIDE DRAMATIC OPPORTUNITIES NOT ONLY FOR TECHNICAL COOPERATION,
AS WE HAVE RECENTLY SEEN IN THE APOLLO-SOYUZ PROJECT, BUT ALSO
MORE GENERALLY FOR BROAD INTERNATIONAL COOPERATION IN SUCH AREAS
AS COMMUNICATIONS AND THE RADICAL UNIVERSAL EXPANSION OF KNOWLEDGE
ABOUT THE NATURE OF OUR EARTH. WE WILL DO OUR BEST TO ENSURE THAT
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FUTURE DEVELOPMENTS IN INTERNATIONAL LAW CONTINUE TO PURSUE THESE
GOALS.
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